

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Matthew Patry	Team: Team # 7	CCRB Case #: 200714219	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 09/27/2007 1:15 PM	Location of Incident: § 87(2)(b)	Precinct: 43	18 Mo. SOL 3/27/2009	EO SOL 3/27/2009	
Date/Time CV Reported Thu, 09/27/2007 10:00 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Thu, 09/27/2007 10:00 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. LT Fernando Guimaraes	00000	915848	043 PCT
2. POM Miguel Santiago	31625	904998	043 PCT
3. An officer			043 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Michael Cuadra	03492	923718	043 PCT
2. POM Nicolas Dipardo	30151	925200	043 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT Fernando Guimaraes	Abuse: Lt. Fernando Guimaraes authorized the questioning § 87(2)(b)	§ 87(2)(b)
B.POM Miguel Santiago	Abuse: PO Miguel Santiago entered § 87(2)(b) in the Bronx.	§ 87(2)(b)
C. An officer	Abuse: An officer entered and § 87(2)(b) in the Bronx.	§ 87(2)(b)
D.POM Miguel Santiago	Abuse: PO Miguel Santiago frisked § 87(2)(b)	§ 87(2)(b)
E.POM Miguel Santiago	Abuse: PO Miguel Santiago searched § 87(2)(b)	§ 87(2)(b)
F. An officer	Abuse: An officer searched § 87(2)(b)	§ 87(2)(b)
G.LT Fernando Guimaraes	Abuse: Lt. Fernando Guimaraes entered and searched § 87(2)(b) in the Bronx.	§ 87(2)(b)
§ 87(4-b), § 87(2)(g)	§ 87(4-b), § 87(2)(g)	§ 87(2)(b)
§ 87(4-b), § 87(2)(g)	§ 87(4-b), § 87(2)(g)	§ 87(2)(b)

### Synopsis

On September 27, 2007, at approximately 1:00 PM, § 87(2)(b) left his home, which is located at § 87(2)(b) in the Bronx. § 87(2)(b) walked to a Chinese food restaurant on § 87(2)(b) and § 87(2)(b) § 87(2)(b) ordered take-out and then left the restaurant. At this time, PO Michael Cuadra and PO Nicolas Dipardo of the 43<sup>rd</sup> Precinct SNEU team were parked outside of the Chinese food restaurant. PO Cuadra observed § 87(2)(b) smoking what he believed to be marijuana and placed this observation over the radio to Lt. Fernando Guimaraes and PO Miguel Santiago, who responded to the vicinity. § 87(2)(b) walked back to § 87(2)(b) and was about to enter his house. PO Cuadra placed a description of § 87(2)(b) and his location (§ 87(2)(b)) over the radio. § 87(2)(b) then entered § 87(2)(b) and Lt. Guimaraes, PO Santiago, and an unidentified male officer in uniform, PO1, approached the house. § 87(2)(b) alleged that he went upstairs to put his food in his book bag and he heard someone say aloud “hello.” § 87(2)(b) exited his room and allegedly saw Lt. Guimaraes, PO Santiago, and PO1 standing on the stairs inside of his house (**Allegations B and C**). § 87(2)(b) exited his house with the officers and he alleged that the officers questioned him (**Allegation A**). PO Santiago then frisked § 87(2)(b) (**Allegation D**) and allegedly searched his pockets (**Allegation E**). PO1 or PO Santiago then allegedly searched a pair of gloves that § 87(2)(b) was wearing (**Allegation F**). At this point, the officers had determined that § 87(2)(b) had gotten take-out food from a Chinese food restaurant. Lt. Guimaraes entered § 87(2)(b) and walked into a bedroom adjacent to the living room and felt a bag with Chinese food in it (**Allegation G**). The bag was still warm so Lt. Guimaraes exited the apartment. Lt. Guimaraes, PO Santiago, and PO1 left. § 87(4-b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

### Summary of Complaint

On September 27, 2008, § 87(2)(b) called the CCRB and made a complaint on the call processing system on the behalf of his brother, § 87(2)(b) (Encl. 4A-B). § 87(2)(b) did not witness the incident. § 87(2)(b) provided the following formal statement to the CCRB on October 25, 2007 (Encl. 5A-D): § 87(2)(b) was interviewed at the CCRB on October 25, 2007. § 87(2)(b) is a § 87(2)(b) -old Indian male who stands 5’7” and weighs 220lbs. § 87(2)(b) § 87(2)(b) lives with his family at § 87(2)(b) Bronx, NY. This is a private, two-story residence.

At approximately 1:00 PM, § 87(2)(b) left his family’s apartment, which is located at § 87(2)(b) and walked to a Chinese food restaurant on § 87(2)(b) and § 87(2)(b) and purchased something to eat. § 87(2)(b) was dressed in “Goth” clothing: a black T-shirt with rolled up sleeves; long black gloves that ran to his elbows; and black jeans with metal chains attached. The restaurant is approximately four

blocks from his home. § 87(2)(b) ran into two friends on the way home and stopped briefly to talk. He did not exchange anything with these men. § 87(2)(b) walked down § 87(2)(b) to his house. He stopped again to talk to a neighborhood mechanic, who works out on the street on § 87(2)(b) between § 87(2)(b) § 87(2)(b) (one block away from § 87(2)(b)'s house). § 87(2)(b) and the mechanic did not exchange anything. § 87(2)(b) did not buy drugs from the mechanic and did not sell drugs to the mechanic.

§ 87(2)(b) walked to his house to get something from his § 87(2)(b) floor bedroom. § 87(2)(b) knew that he would be leaving shortly, so he left the front door open. § 87(2)(b) went to his room and put his food in his book bag. § 87(2)(b)'s room was very messy, as § 87(2)(b) had just emptied the contents of a dresser onto the floor and bed so he could throw out the dresser. § 87(2)(b) was alone in the house.

§ 87(2)(b) heard someone call out "hello." § 87(2)(b) exited his bedroom and saw three uniformed male police officers standing inside his house on the stairway leading to the second floor. A male officer wore a white shirt (Based upon this description and Lt. Guimaraes statement this officer was identified as Lt. Guimaraes). § 87(2)(b) could not offer any further description of Lt. Guimaraes. The officers radioed to someone. The officers asked § 87(2)(b) to come outside with them. § 87(2)(b) complied. Everyone stood on the front porch. § 87(2)(b) could see the officers' vehicle, a black unmarked Impala, in the street. One of the officers, whom § 87(2)(b) could not recall asked if § 87(2)(b) lived there. § 87(2)(b) said he did. The officers asked why he left the door open. § 87(2)(b) said that he only intended to be inside for a short period of time. A Hispanic male, approximately 5'7", frisked § 87(2)(b) and then reached into § 87(2)(b)'s pants pockets and removed his cell phone and wallet (This officer was identified by the investigation as PO Miguel Santiago based on the similarity of his pedigree to § 87(2)(b)'s description § 87(2)(g)). PO Santiago flipped § 87(2)(b)'s pants pockets inside out. PO Santiago opened § 87(2)(b)'s phone and took it apart: he took it out of its case, removed the battery, removed the SIMM card and then returned it to § 87(2)(b)'s pockets. PO Santiago looked through § 87(2)(b)'s wallet and removed his ID. § 87(2)(b)'s ID shows that he lives at § 87(2)(b). One of the other officers, either Lt. Guimaraes or PO1 (unidentified officer that § 87(2)(b) provided no description of) rolled down one of § 87(2)(b)'s sleeves and rolled up one of his gloves. The officers asked if § 87(2)(b) had gotten anything from the mechanic. § 87(2)(b) said that he had not.

PO Santiago stayed on the porch with PO1 while Lt. Guimaraes went back into the house. § 87(2)(b) could not see where this officer went. An unmarked black van pulled up in front of the location next to the Impala, but no one exited this vehicle. Lt. Guimaraes exited the house and the officers returned § 87(2)(b)'s wallet and cell phone and left the scene.

### **Results of Investigation**

PO Michael Cuadra provided the following statement to the CCRB on April 29, 2008 (Encl. 7A-B):

On September 27, 2009, PO Cuadra worked from 9:20 AM to 6:05 PM and worked overtime until 9:15 PM. PO Cuadra was assigned to the observation vehicle of the 43<sup>rd</sup> Precinct's SNEU team. PO Cuadra was working with PO Nicolas Dipardo and was in plainclothes. PO Cuadra was assigned to an unmarked automobile. PO Cuadra did not know the vehicle number. PO Cuadra did not remember where he was seated in the vehicle.

PO Michael Cuadra had no memo book entries regarding the incident (Encl. 6A-B)

PO Cuadra was doing an observation of a nearby location when he observed § 87(2)(b) smoking what appeared to be a marijuana cigarette. PO Cuadra was parked eight feet away when § 87(2)(b) walked past him. PO Cuadra did not know what the cross streets were of where he made the observation. § 87(2)(b) was carrying a paper or plastic bag. § 87(2)(b) was holding what appeared to be a marijuana cigarette with the tips of his right index finger and right thumb. The cigarette itself was very small and § 87(2)(b) appeared to be "toking" at it. The color of the substance § 87(2)(b) was smoking was brown. Based upon his observations and his training and experience as a police officer, PO Cuadra surmised that § 87(2)(b) was smoking a marijuana cigarette. PO Cuadra observed § 87(2)(b) smoking at what appeared to be

a marijuana cigarette for thirty to forty seconds. PO Cuadra put over the radio a description of § 87(2)(b) to the SNEU apprehension team, which was comprised of Lt. Guimaraes and PO Miguel Santiago. PO Cuadra did not remember what kind of clothing § 87(2)(b) was wearing or the specifics of the description he provided. As the apprehension team approached § 87(2)(b) he was walking up the stoop of § 87(2)(b) and entering the home (The address was identified as § 87(2)(b) during the course of the investigation.). PO Cuadra, who maintained a visual of § 87(2)(b) at all times, confirmed to the apprehension team that § 87(2)(b) was the person he observed to be smoking what looked to be a marijuana cigarette. At this point, § 87(2)(b) was fifty to sixty feet away from where PO Cuadra was.

Lt. Guimaraes, PO Miguel Santiago, and two of the conditions teams responded to the § 87(2)(b) exited their vehicles, and approached § 87(2)(b) to stop him. PO Cuadra did not remember who the conditions officers were who participated in the stop of § 87(2)(b). The conditions team was assisting SNEU that day because SNEU did not have enough manpower for the day. PO Cuadra and PO Dipardo resumed patrol at this point so that the observation vehicle would not be identified as a police vehicle. PO Cuadra did not see if § 87(2)(b) was frisked or searched and stated that he did not see if PO Santiago and Lt. Guimaraes had any difficulty stopping § 87(2)(b). PO Cuadra did not know if PO Santiago, Lt. Guimaraes or any of the conditions officers entered § 87(2)(b) or called out to § 87(2)(b) to effect the stop. PO Cuadra did not see any officers rifling through § 87(2)(b)'s wallet or unrolling § 87(2)(b)'s gloves.

PO Cuadra stated that a sidewalk mechanic operates a block away from where § 87(2)(b) was stopped. Several people the mechanic associates with have been arrested § 87(2)(b). PO Cuadra did not observe § 87(2)(b) talking to or interacting with the sidewalk mechanic. PO Cuadra stated that nothing was recovered from § 87(2)(b) and he was not arrested.

Lt. Guimaraes provided the following statement to the CCRB on April 3, 2008 (Encl. 9A-C):

On September 27, 2007, Lt. Fernando Guimaraes worked a tour of 08:40 by 21:00 and his assignment was special operations lieutenant. This assignment entails supervising multiple units. Lt. Guimaraes stated that on September 27, 2007 he was working with the SNEU Team. Lt. Guimaraes could not recall who was his operator for the day (Identified by the investigation as PO Santiago). Lt. Guimaraes stated that he believed that there were two other male officers in the car (The second male in the car was not identified by the investigation). Lt. Guimaraes was in plainclothes and was in an unmarked vehicle. Lt. Guimaraes stated that at the time of the incident he used RMP § 87(2)(b) which is a golden Crown Victoria.

Lt. Guimaraes had no memo book entries regarding the incident (Encl. 8A-B).

On September 27, 2007, at approximately 1:15 PM, two unknown officers (Identified by the investigation as PO Michael Cuadra and PO Nicolas Dipardo) were doing observations at the corner of § 87(2)(b) and § 87(2)(b) in the Bronx. Lt. Guimaraes stated that PO Cuadra and PO Diardo were operating within an observation post, which was a zone on § 87(2)(b) between § 87(2)(b), § 87(2)(b) and the surrounding areas. Lt. Guimaraes stated that this is a drug prone location for marijuana, crack cocaine, and heroin. PO Cuadra and PO Dipardo sent a call over the radio that a male, identified by the investigation as § 87(2)(b) left "the set" and started walking "up § 87(2)(b)." PO Cuadra and PO Dipardo stated that the male was smoking something but they could not tell what it was and requested that the other officers check it out to see if it was a cigarette, a marijuana cigarette, or a crack pipe. At this point, Lt. Guimaraes was in his vehicle on § 87(2)(b). PO Cuadra and PO Dipardo stated over the radio that § 87(2)(b) was walking up the stairs of an address. Lt. Guimaraes could not recall what the address was. The address was identified by the investigation as § 87(2)(b). Lt. Guimaraes indicated that PO Cuadra and PO Dipardo provided a description of § 87(2)(b) and he fit the description. Lt. Guimaraes could not recall § 87(2)(b)'s description or what he was wearing. Lt. Guimaraes could not recall if an officer took off gloves that § 87(2)(b) was wearing.

PO Santiago responded to the § 87(2)(b) and Lt. Guimaraes observed § 87(2)(b) as he walking up the stairs of the address. Lt. Guimaraes stated § 87(2)(b) was the only individual walking up the stairs

to the address. As § 87(2)(b) was walking up the steps, either Lt. Guimaraes or his operator called out twice to § 87(2)(b) “Hey come over here.” § 87(2)(b) continued to walk because he had headphones on. Lt. Guimaraes did not see if § 87(2)(b) had anything in his hand because his back was towards him. Lt. Guimaraes believed that the building was an abandoned home because the front yard was littered with weeds, newspapers, fliers, the front gate was broken, and the grass was not cut.

At this point, the door was open to the residence. Lt. Guimaraes stated that it was not “well kept” because there was stuff all over the floor inside. Based on this and the outside appearance of the address, Lt. Guimaraes believed that the address was a squatter’s apartment.

Lt. Guimaraes made the decision to approach § 87(2)(b). Lt. Guimaraes was asked if § 87(2)(b) had entered the location and he responded, “Yes, the door was definitely opened as we were coming up right behind him. What I can remember is...steps to go in, walkway, porch, door opens, and his apartment or his residence was right there. The door was open to his residence and it was like a vestibule. His door was definitely open to his residence or he was coming out because we met face to face.” PO Santiago and PO1 walked up the stairs to § 87(2)(b) “entered the vestibule area,” and they encountered § 87(2)(b). Lt. Guimaraes stated that this vestibule area was inside of the front door. Lt. Guimaraes could not recall if § 87(2)(b) was upstairs when the officers entered the vestibule area. Lt. Guimaraes was asked if § 87(2)(b) came back out of his residence and he responded, “It occurred somewhere where we encountered again or we were able to tap him. I just can’t remember how we came back again to see each other. We called him out or we brought him out towards the vestibule.” § 87(2)(b) asked the officers what was going on and they explained to him “what they were doing and what their function was.” The officers Lt. Guimaraes was working with then frisked § 87(2)(b). Lt. Guimaraes was asked if he authorized the frisk and he responded, “I don’t authorize it. If the officer feels in his heart that an individual should be frisked for his safety...absolutely.” The frisk occurred in the vestibule area. The officers asked § 87(2)(b) what he was smoking or what he had in his mouth. Lt. Guimaraes could not recall what his reply was. Lt. Guimaraes never smelled marijuana during § 87(2)(b)’s stop.

Lt. Guimaraes went inside of the building to make sure no one else was in the house. When Lt. Guimaraes exited the building, the other officers were still interviewing § 87(2)(b). Lt. Guimaraes stated that the officers had gathered that § 87(2)(b) was inside of a “take-out location,” which was at the area where the other officers were making observations. § 87(2)(b) informed the officers that he had purchased some food. The officers asked him where the food was and § 87(2)(b) informed them that he had dropped it in the bedroom. Lt. Guimaraes went into the apartment walked through the living room and entered a bedroom adjacent to the living room and was a bag with Chinese food in it. Lt. Guimaraes felt the bag and the food was warm. Lt. Guimaraes then exited the apartment and he informed the officers that the food was warm and § 87(2)(b) did have take-out food from the location that the other officers were observing. § 87(2)(b) was not placed under arrest and nothing was recovered off of him.

Lt. Guimaraes did not recall what § 87(2)(b) was wearing. Lt. Guimaraes could not recall if § 87(2)(b) was wearing gloves. Lt. Guimaraes could not recall if an officer took off § 87(2)(b)’s gloves. Lt. Guimaraes could not recall if he or any officers walked up the stairs to the second floor of the residence. Lt. Guimaraes could not recall if he or an officer searched through § 87(2)(b)’s wallet.

Lt. Guimaraes stated that no additional officers arrived on scene during the incident and that nothing was recovered off of § 87(2)(b). Lt. Guimaraes was asked if § 87(2)(b) was asked for ID and he responded, “I would assume so if my officers did a 250... a stop, question and frisk.” Lt. Guimaraes stated that it is the supervisor’s responsibility to ensure that a UF-250 was completed. Lt. Guimaraes was asked if he made any effort to make sure a UF-250 was completed, “Usually I would say lets do a 250 or prepare a 250. I would hope it was done.”

PO Miguel Santiago provided the following statement to the CCRB on April 25, 2008 (Encl. 11A-C):

On September 27, 2007, PO Santiago worked a tour of 08:00 by 20:35 and he was assigned to be the apprehension car of a SNEU operation. PO Santiago was also the operator for Lt. Guimaraes. PO Santiago

stated he and Lt. Guimaraes were the only officers assigned to an unmarked vehicle, § 87(2)(b) a gold sedan. PO Santiago was in uniform and Lt. Guimaraes was in plainclothes.

PO Santiago had no memo book entries regarding this incident (Encl. 10A-B).

On September 27, 2007, at approximately 1:15 PM, PO Santiago and Lt. Guimaraes were doing SNEU operations when PO Cuadra observed the defendant, identified by the investigation as § 87(2)(b) to be smoking what he believed to be a marijuana cigarette. PO Santiago could not recall where PO Cuadra was when he made this observation. PO Cuadra provided a description of § 87(2)(b) and stated the direction “he was going.” PO Cuadra stated the description was a clothing description but he could not recall what it was.

PO Santiago and Lt. Guimaraes first observed § 87(2)(b) walking up the stairs of an address (This address was identified by the investigation as § 87(2)(b)). PO Santiago double parked the car on the opposite side of § 87(2)(b). PO Santiago stated that the address is a drug prone location for “crack, heroin, weed, and coke.” PO Santiago called out “Police” twice as he exited his vehicle. § 87(2)(b) could not hear him because he was approximately 25 feet away wearing earphones. PO Santiago was asked if § 87(2)(b) had anything in his hand and PO Santiago responded, “He had Chinese food.” PO Santiago knew it was Chinese food because he was later informed by § 87(2)(b) that it was Chinese food. PO Santiago stated that § 87(2)(b) also appeared to be smoking a marijuana cigarette. § 87(2)(b) entered the address without using a key and he left the door open after he went inside.

PO Santiago described § 87(2)(b) as a “ransacked house” that was “dirty and everything was out of place...clothes were everywhere.” PO Santiago was asked if he believed people lived there and he responded, “Yeah, people lived there. But you could see clothes everywhere. Like I say...you know...a dirty house.” PO described the outside of the house as “a little porch and bikes lying down around.”

PO Santiago and Lt. Guimaraes walked up the stairs to § 87(2)(b) and yelled out loud, “Police...Anybody here,” through the open front door. § 87(2)(b) came out of the residence with the cigarette he was smoking. PO Santiago asked § 87(2)(b) for identification. § 87(2)(b) reached into his back pocket, pulled out his wallet, and showed his identification to the officers, which confirmed that he lived at the address. PO Santiago stated that he and Lt. Guimaraes entered the threshold into the house when § 87(2)(b) was in front of them.

PO Santiago frisked § 87(2)(b)'s outer garment to make sure that he had no weapons. PO Santiago stated that he frisked § 87(2)(b) for his safety. PO Santiago stated that § 87(2)(b) was wearing “gothic clothes...long sleeve, chains everywhere, all black.” § 87(2)(b) was also wearing long gloves. PO Santiago stated that he “tapped” all four pockets on § 87(2)(b)'s pants. PO Santiago denied that he searched § 87(2)(b). PO Santiago was asked if he had any reason to fear for his safety and he responded, “I always to make sure there is no gun or knife.” PO Santiago was asked if there was anything about § 87(2)(b) that led PO Santiago to fear for his safety and he responded, “No, it is one of my pet peeves that I like to make sure that there are no weapons involved.” At this point, Lt. Guimaraes was standing next to PO Santiago. Lt. Guimaraes did not go anywhere else. PO Santiago and Lt. Guimaraes determined that § 87(2)(b) was smoking a “rolley.” PO Santiago stated that a “rolley” is a hand made cigarette. PO Santiago and Lt. Guimaraes told § 87(2)(b) that they thought he was smoking a marijuana cigarette and he denied that he smoked. PO Santiago and Lt. Guimaraes then left.

PO § 87(2)(b) denied that Lt. Guimaraes searched § 87(2)(b). PO Santiago denied taking § 87(2)(b)'s wallet and denied taking his ID out of his wallet. PO Santiago denied that he rolled down the gloves that § 87(2)(b) was wearing. PO Santiago could not recall questioning § 87(2)(b) about receiving anything from a mechanic in the area. PO Santiago did not know of a mechanic shop in the area. PO Santiago could not recall if Lt. Guimaraes ever walked into the apartment. PO Santiago could not recall if Lt. Guimaraes entered the apartment to check if the Chinese food was warm.

PO Santiago was asked if he completed a UF-250 and he stated, “I probably put it somewhere in my memo book or maybe the lieutenant put it down in his stuff. I don’t know. I can’t recall.” PO Santiago reviewed

his memo book. PO Santiago stated it was his responsibility to ensure that a UF-250 was completed. PO Santiago was asked if he did anything to ensure it was completed and he responded, "I must have forgot. I probably wrote it on a piece of paper and completely forgot about it." PO Santiago was asked if Lt. Guimaraes directed him to complete a UF-250 and he stated, "It's probably my fault. I probably wrote it down on a piece of paper and never did the 250 myself."

Officers not Interviewed:

§ 87(2)(g)

NYPD Documents:

43<sup>rd</sup> Precinct Roll Call for Tour 2 on September 27, 2007 (Encl. 12A-P):

Lt. Guimaraes was assigned to special operations and he worked a tour of 08:40 by 17:75. PO Santiago, PO Cuadra and PO Dipardo were assigned to a SNEU Team. PO Cuadra and PO Santiago worked a tour of 09:30 by 18:05. PO Dipardo worked a tour of 08:00 by 16:35.

Fleet Services Database Information (Encl.13A-C):

Vehicle number § 87(2)(b), is a tan Ford Crown Victoria assigned to the 43<sup>rd</sup> Precinct.

Stop, Question and Frisk Log and Reports for the 43<sup>rd</sup> Precinct on September 27, 2007 (Encl. 13A-C):

There were no stop question and frisk reports completed for § 87(2)(b)

Civilians' Criminal Conviction Histories:

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilians' CCRB Histories (Encl. 3A-B):

§ 87(2)(b) and § 87(2)(b) have not been involved in any other CCRB complaints

Officers' CCRB Histories (Encl. 2A-E):

Lt. Guimaraes, PO Cuadra, and PO Santiago have had no allegations substantiated against them.

Subject Officer Identification:

Lt. Guimaraes was identified as the officer in a white shirt that § 87(2)(b) described in his formal statement because Lt. Guimaraes was the only 43<sup>rd</sup> Precinct lieutenant assigned to special operations during tour 2 on September 27, 2007. PO Santiago was identified as a subject officer because he assigned to be Lt. Guimaraes operator according to Lt. Guimaraes § 87(2)(b), § 87(2)(g)

Conclusions and Recommendations

Allegation not Pleased:

§ 87(2)(b), § 87(2)(g)

Disputed Facts:

§ 87(2)(b), § 87(2)(g)

Undisputed Facts:

It is not disputed that § 87(2)(b) left the front door to his apartment open. It is not disputed that § 87(2)(b) was stopped. It is not disputed that § 87(2)(b) was frisked.

Assessment of Evidence:

§ 87(2)(b) stated that three uniformed male officers came into his house while he was upstairs in his bedroom. PO Santiago stated that he was Lt. Guimaraes operator and denied that anyone else was in the vehicle. Lt. Guimaraes stated that he believed he was working with two male officers but he did not have them listed in his memo book and he could not recall who he was working with. According to the 43<sup>rd</sup> Precinct roll call, PO Santiago, PO Cuadra, and PO Dipardo were assigned to the SNEU Team. According to PO Cuadra's memo book, he and PO Dipardo were assigned to a vehicle together. The 43<sup>rd</sup> Precinct roll call does not indicate what vehicles the officers are assigned to. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) in a phone call subsequent to his interview, § 87(2)(b) stated he would not be able to identify PO1 from photos § 87(2)(g)

PO Michael Cuadra, who was working an observation post for the 43<sup>rd</sup> Precinct SNEU team observed § 87(2)(b) smoking what he believed to be a marijuana cigarette. § 87(2)(b) made no mention of smoking anything in his CCRB statement. Lt. Guimaraes never observed § 87(2)(b) smoking anything. PO Santiago stated that he determined that § 87(2)(b) was smoking a hand rolled cigarette after speaking with him. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) alleged that PO1 and officers identified by the investigation as Lt. Guimaraes, PO Santiago entered § 87(2)(b) and called him out of his room. Lt. Guimaraes, PO Santiago, and § 87(2)(b) were all in agreement that § 87(2)(b) left the front door to § 87(2)(b) ajar when he entered his apartment. According to Lt. Guimaraes statement, § 87(2)(b) was called downstairs to an area that Lt. Guimaraes described as a vestibule. § 87(2)(b) referred to the building as his "family's apartment" § 87(2)(g)

According to the New York Department of Buildings (Encl. 13E-F), § 87(2)(b) is designated as a two family house, § 87(2)(g)

§ 87(2)(b) alleged that PO Santiago made him empty out his pockets and he disassembled his phone, and searched through his wallet. PO Santiago denied that he did this and stated he only frisked § 87(2)(b) Lt. Guimaraes could not recall if an officer searched through § 87(2)(b)'s wallet. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) alleged that PO1 or Lt. Guimaraes pulled up his glove and pulled down the sleeves to his glove. PO Santiago denied that he did this to § 87(2)(b) Lt. Guimaraes could not recall if an officer pulled up § 87(2)(b)'s glove. § 87(2)(b), § 87(2)(g)



After having § 87(2)(b) come outside, § 87(2)(b) alleged that Lt. Guimaraes entered his home while he remained outside talking with the other officers. Lt. Guimaraes admitted to entering § 87(2)(b)'s home and stated he entered because § 87(2)(b) informed the officers that he got take-out food from a Chinese restaurant and Lt. Guimaraes wanted to check. Lt. Guimaraes stated that he entered the apartment, walked through the living room, to a bedroom, where he felt the bag containing the food.

Allegation (A): Lt. Fernando Guimaraes authorized the questioning of § 87(2)(b)

It is undisputed that the officers acting under the authority of Lt. Guimaraes questioned § 87(2)(b) at § 87(2)(b). Under DeBour, a level II common law right to inquire requires “a founded suspicion that criminality is afoot.” (Kamins § 2.03[1]) PO Cuadra observed § 87(2)(b) smoking what he believed to be a marijuana cigarette based on his experience and training as a police officer. PO Cuadra placed this observation over the radio to Lt. Guimaraes and provided a description and a precise location where § 87(2)(b) was. Subsequent to this, Lt. Guimaraes and PO Santiago questioned § 87(2)(b) who fit the description and was at the location PO Cuadra provided. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation (B): PO Miguel Santiago entered § 87(2)(b) in the Bronx.

Allegation (C): Officers entered § 87(2)(b) in the Bronx.

§ 87(2)(b) alleged that three officers entered § 87(2)(b). During the investigation, PO Santiago was identified as one of these officers by the testimony of Lt. Guimaraes. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation (D): PO Miguel Santiago frisked § 87(2)(b)

§ 87(2)(b) alleged that PO Santiago frisked him after he was stopped. In his statement to the CCRB, PO Santiago admitted that he frisked § 87(2)(b). According to *Kamins: New York Search and Seizure* (Encl. 10), “The most intrusive level of police conduct, short of an arrest is the right of a police officer to “stop and frisk” an individual. The power is derived from Criminal Procedure Law (CPL) 140.50 (3), which provides: “When...a police officer...reasonably suspects that he is danger of physical injury, he may search such person for a deadly weapon or any instrument, article or substance readily capable of causing serious physical injury and of a sort not ordinarily carried in public places by law-abiding persons.” In his statement, PO Santiago stated that he frisked § 87(2)(b) for his safety. PO Santiago was asked if he had any reason to fear for his safety and he responded, “I always to make sure there is no gun or knife.” PO Santiago was asked if there was anything about § 87(2)(b) that led PO Santiago to fear for his safety and he responded, “No, it is one of my pet peeves that I like to make sure that there are no weapons involved.” As noted in *Kamins* an officer may only frisk an individual if they reasonably believe that they are in danger of physical injury. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation (E): PO Miguel Santiago searched § 87(2)(b)

§ 87(2)(b) alleged that PO Santiago searched his pockets. PO Santiago denied that he searched § 87(2)(b)'s pockets. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

Allegation (F): An officer searched § 87(2)(b)

§ 87(2)(b) alleged that PO Santiago or another officer pulled his gloves down and searched them. PO Santiago denied searching § 87(2)(b)'s gloves. In a phone call subsequent to § 87(2)(b)'s interview, § 87(2)(b) stated that he would not be able to identify the officer who pulled down his gloves. § 87(2)(g), § 87(2)(b)

Allegation (G): Lt. Fernando Guimaraes entered and searched § 87(2)(b) in the Bronx.

§ 87(2)(b) alleged that Lt. Guimaraes entered his house after speaking with him on the porch of § 87(2)(b). Lt. Guimaraes admitted that he entered § 87(2)(b)'s apartment and walked through the living room, into a bedroom, and felt Chinese food that § 87(2)(b) had recently purchased from a Chinese food restaurant. On this topic, Kamins (Encl. 1P) states, "It is a basic tenant of search and seizure law that, absent a warrant, a search is per se unconstitutional, and in only a few specific exceptional circumstances will a warrantless search be upheld as reasonable." Kamins notes three exceptions in which officers can enter a private residence without a warrant: exigent circumstances, consent, and hot pursuit. § 87(2)(b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date:

